THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.23602 OF 1998

Dated: 12-04-2007

Between :

1. G. Hanumandas and another. .... Petitioners

and

1. The Commissioner of Land Reforms and Urban Land Ceiling, Andhra Pradesh, Hyderabad., And another. ... Respondents

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WRIT PETITION NO.23602 OF 1998

ORDER :

The petitioners herein claim to be the owners and possessors of agricultural land situated in Sy.Nos.418 and 419 of Uppal Bagath Village, Rangareddy District which was not included in the Master Plan existing as on the date of enforcement of the Urban Land (Ceiling and Regulation) Act, 1976 (for short, 'the Act'). Though the provisions of the Act are not applicable to the said lands, under a mistaken impression, the petitioners filed their declarations under the Act and the 2nd respondent without conducting proper enquiry passed an order dated 4-8-1995 determining that the petitioners were holding excess vacant land. Aggrieved by the same, the petitioners filed an Appeal before the 1st respondent. The said Appeal was disposed of by order dated 8-10-1997 thereby remanding the matter to the 2nd respondent for *de novo* enquiry and pass fresh orders after giving opportunity to all the persons concerned.

The said order dated 8-10-1997 is under challenge in this writ petition contending primarily that since the land in question was not covered by Master Plan as on the date of the enforcement of the Act in the State of Andhra Pradesh, as held by the Supreme Court in ATIA MOHAMMADI BEGUM (SMT) v. STATE OF U.P. AND OTHERS[1] the 1st respondent ought to have allowed the appeal as prayed for instead of remanding the matter for *de novo* enquiry.

I have heard the learned Counsel for both the parties and

perused the material on record.

The Urban Land (Ceiling and Regulation) Act, 1976 is made applicable to the State of Andhra Pradesh w.e.f. 17-6-1976. Section 3 of the Act imposed restriction on holding vacant land in excess of the ceiling limit as specified in Section 4 of the Act. The expression 'vacant land' is defined under Section 2 (q) of the Act and Section 2 (o) defined 'urban land'. A combined reading of the said definitions show that the vacant land means only such land which is not meant for the purpose of agriculture and on which construction of a building is not permissible.

In ATIA MOHAMMADI BEGUM'S case (1 supra), it was declared by the Supreme Court that it is only such land within the urban agglomeration which is covered by the Master Plan existing as on the relevant date applicable to the respective States, that is liable to be treated as urban land or vacant land as the case may be and that the Act has no application for the land which is not covered by the Master Plan though it is situated within the urban agglomeration.

However, in a later decision in STATE OF A.P. AND OTHERS v. A. AUDIKESAVA REDDY AND OTHERS[2], it was clarified by the Supreme Court that the Master Plan prepared as per law in force even subsequent to enforcement of the Act is to be taken into consideration to determine whether a particular piece of land is vacant land or not.

In the case on hand, it is not in dispute that as on the relevant date i.e., 17-2-1976 the Master Plan of Hyderabad City did not include the land in question which is situated in Uppal Bagath Village. However, the said land was included in the Master Plan issued subsequently in the year 1980.

In the circumstances, in the counter-affidavit filed on behalf of the respondents, it is contended that the lands in question are liable to be treated as vacant land and were rightly taken into consideration while determining the holding of the petitioners. The allegation of the

petitioners that no proper enquiry was conducted before determining the surplus area held by the petitioners was also denied in the counter-affidavit and it was also pleaded that since the petitioners failed to hand over the possession of the surplus land to an extent of 18,829.56 sq. mts. situated in Sy.Nos.418 and 419 of Uppal Bagath Village, in spite of the notice under Section 10 (5) of the Act, the respondents in exercise of powers under Section 10 (6) of the Act had taken possession and the same was handed over to the Mandal Revenue Officer, Uppal on 21-8-1997 under panchanama. It is also the specific case of the respondents that the lands were not used for growing paddy as on the date of the enforcement of the Act but the same were being used for growing Para grass and therefore it did not come under the definition of agricultural land within the meaning of Section 2 (o) (ii) of the Act.

Thus, the only question that requires to be clarified is whether the land in question can be said to have become vacant land as on 17-2-1976.

An identical question was considered by a Division Bench of this Court in STATE OF A.P. AND ANOTHER v. S.B. KOMARAIAH[3]. In the said case, the Division Bench was dealing with the Uppal Kalan Revenue Village of Rangareddy District which was not included in the Master Plan initially on the date of the enforcement of the Act, but was so included subsequently under the Master Plan published on 29-9-1980.

The Division Bench having considered all the relevant statutory provisions held that the land in the said village can be treated as vacant land only with effect from the date on which the new Master Plan was published. The relevant portion from the said judgment may be extracted hereunder :

> *"Therefore, the only conclusion that can be arrived is that as and when any land, which was not vacant at the time of commencement of the Act becomes vacant on a*

subsequent date, the holdings of the persons have to be decided with reference to the subsequent date on which the land becomes vacant. Any adjudication in respect of such lands with reference to the date of commencement of the Act cannot be sustained. Admittedly, in the present case, the land in question came to be treated as vacant land with effect from 29-9-1980 on which date the new master plan was published. It is not in dispute that the holdings of the respondents were decided with reference to 17-2-1976 i.e., the date of commencement of the Act. Therefore, the order passed by the 2nd respondent under Section 8 (4) of the Act dated 7-4-1990 as well as the order passed by the appellate authority on 22-1-1991 are set aside."

The principle laid down by the Division Bench squarely applies to the case on hand, since admittedly the land in question was included in the Master Plan only in the year 1980. Accordingly, following the decision of the Division Bench, I hold that the holdings of the petitioners have to be decided with reference to the subsequent Master Plan published in the year 1980 on which date the land became vacant.

As noted above, since the matter involves certain other questions of fact, though the order of the 1st respondent directing *de novo* enquiry cannot be set aside, it is made clear that the 2nd respondent shall conduct the enquiry and decide the matter afresh with regard to the holding of the petitioners with reference to the date of publication of the new Master Plan in the year 1980.

With the above clarification, the Writ Petition is disposed of. No costs.

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G. ROHINI, J.

Dt. 12–4-2007
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[1] (1993) 2 SCC 546

[2] 2001 (8) Supreme 158

[3] 2002 (2) ALD 253 (DB)